

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

THE UNITED STATES OF AMERICA,

Plaintiff,

versus 3:20 CR 109 & 116

GORDON G. MILLER, III,

Defendant

Before: HONORABLE JOHN A. GIBNEY, JR.
United States District Judge

August 6, 2021
Richmond, Virginia

Gilbert F. Halasz, RMR
Official Court Reporter
U. S. Courthouse
701 East Broad Street
Richmond, Virginia 23219
(804) 916-2248

APPEARANCES

Kevin Spencer Elliker, Esq.
Assistant United States Attorney
For the United States

George Alfred Townsend, IV, Esq.
Assistant Public Defender
For the defendant

The defendant
in his own proper person

1 THE CLERK: Case number 3:20 CR 109 and 3:20 CR 116.

2 United States of America versus Gordon G. Miller,

3 III.

4 Mr. Kevin Elliker represents the United States.

5 Mr. George Townsend, IV represents the defendant.

6 Are counsel ready to proceed?

7 MR. ELLIKER: United States is ready.

8 Good morning, Your Honor.

9 MR. TOWNSEND: Defense is prepared.

10 THE COURT: All right. Good morning to Mr. Elliker,

11 Mr. Townsend and Mr. Miller, all three of you. All right.

12 We are here for Mr. Miller's sentencing. The government

13 has moved for an upward departure, upward variance,

14 rather, to 151 months.

15 Is that right, Mr. Elliker?

16 MR. ELLIKER: That's correct, Your Honor.

17 THE COURT: All right.

18 Mr. Townsend, have you had a chance to review the

19 presentence report with Mr. Miller and discuss it with

20 him?

21 MR. TOWNSEND: Yes, sir.

22 THE COURT: And have you gone over the standard

23 conditions of supervised release that are contained in

24 that?

25 MR. TOWNSEND: Yes, sir, we have.

1 THE COURT: Do you have any objections to the
2 presentence report?

3 MR. TOWNSEND: No, sir.

4 THE COURT: Thank you.

5 Mr. Elliker, have you had a chance to look at it?

6 MR. ELLIKER: Yes, Your Honor.

7 THE COURT: Do you have any objections to it?

8 MR. ELLIKER: I have no objections.

9 I have two minor typographical corrections for the
10 record. One is at paragraph -- I noted in our sentencing
11 position, paragraph 20 describing investment fraud
12 victims. The P S R says ten individuals representing
13 eleven investors. Those figures should be nine and ten
14 respectively.

15 THE COURT: All right.

16 MR. ELLIKER: And then paragraph 22, describing
17 posting of You Tube video, the date is 1999. I believe
18 that date is 2019.

19 THE COURT: Okay. Thank you very much. We will --
20 the presentence report will be directed to reflect those
21 things. All right.

22 I will adopt the factual portion of the presentence
23 report as finding of fact in this case. The guidelines
24 are a little complicated in this case, but I will go over
25 how they work out.

1 First of all, count one, wire fraud. Base offense
2 level is seven. The specific characteristics because of
3 the amount of the loss is 14 points for that. Additional
4 two points because it was resulting in substantial
5 hardship on one or more victims. Two points because of
6 the attempted obstruction of justice. A total of 25.
7 With respect the money during the transaction, base
8 offense level of six, loss of money is \$250,000, so 12
9 points added for that.

10 Another point because he was convicted under 18 U.S.
11 code section 1957, for a total adjusted level of 19.

12 Finally, with respect to child pornography, the base
13 offense level is 22. Because he was not involved in
14 trafficking or other exacerbating conduct he gets two
15 points off. But he gets two points added because of the
16 pornography involved was prepubescent, a minor. He gets
17 an additional four points because of the nature of the
18 conduct in the pictures under guideline 2G2.2(b)(4). He
19 gets two more points because a computer was involved. He
20 gets five points because there were six hundred or more
21 images, resulting in total of 33 points on that.

22 He gets -- we group the offenses, he gets an
23 additional point which makes the combined adjusted offense
24 level of 34.

25 The government -- he has pleaded guilty and gets two

1 points off for acceptance of responsibility. The
2 government has moved for the third point off, which leads
3 to a total offense level of 31, which results in a
4 guideline sentence range -- and he has no criminal
5 history -- so his guideline sentence range is 108 to 135
6 months.

7 I have received letters from a lot of people in this
8 case.

9 I have received -- I am not going to go through them
10 all. I read them all. From Mr. Miller himself
11 apologizing for his conducts. From his mother, who says
12 that she doesn't quite know where he went wrong, but she
13 is happy he owned up to what he did.

14 I have received letters from representatives of some
15 of his children in the child pornography. Talked about
16 devastating life-long impact it has had.

17 I have received letters from some of his financial
18 victims, you know, essentially reflecting that he took
19 them to the cleaners, and he robbed them not only of their
20 money but of their dignity and self respect.

21 And I have received letters from various members of
22 his family who talk about, essentially how he was an
23 abusive father, ridiculed people, cheated people in
24 restaurants. And while his criminal history -- his
25 criminal conduct in this case doesn't encompass his whole

1 life he was apparently abusive to family members from the
2 get go of his marriage. It is a sad picture they paint of
3 someone who essentially acted without recognition that
4 these victims of his crime were human; someone who acted
5 without any, not just empathy, not just empathy, but
6 without any recognition that these people throughout his
7 life had dreams and feelings that he routinely dashed.
8 All right.

9 I have received a motion for a variance from
10 Mr. Townsend to take him down to 60 months; and one from
11 Mr. Elliker to take the sentence up to 151 months.

12 Mr. Elliker, I will hear from you first on the
13 request for a variance, the 3553(a) factors, and the
14 appropriate sentence.

15 When you are at the podium you are welcome to remove
16 your mask, which will help my aging ears understand what
17 it is you are saying.

18 MR. ELLIKER: Thank you. Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. ELLIKER: I would note the government doesn't
21 have any evidence in this case.

22 THE COURT: Sorry. I apologize for that.

23 Do you have any evidence, Mr. Townsend, you want to
24 put on today?

25 MR. TOWNSEND: Nothing in addition to what we have

1 already submitted.

2 THE COURT: Do you have any witnesses or any victims
3 who want to say anything?

4 MR. ELLIKER: We don't have any victims of the crime.
5 It is my understanding is the defendant's wife has come to
6 court to give a statement if you would like to hear it.

7 THE COURT: Mr. Elliker, The Court doesn't call
8 witnesses.

9 MR. ELLIKER: We would not plan to call her as a
10 witness, Judge.

11 THE COURT: Okay. I don't want to make things worse
12 for her than they are.

13 MR. ELLIKER: I understand.

14 With that, I can go straight to argument on the
15 sentencing factors and the motion for an upward variance,
16 Judge.

17 We recommended, Your Honor, a sentence of 151 months.
18 That is not a recommendation that we make lightly.

19 Recognizing the seriousness of that recommendation, we do,
20 after consulting the advisory guideline range, which is
21 the starting point for The Court in making that

22 determination today. Primarily, as we laid out in our
23 position papers, based on the nature and the scope and

24 seriousness of the defendant's crimes, as well as the need
25 to provide just punishment to deter him and others and

1 protect the public.

2 Regarding the nature and scope, Judge, the striking
3 panoply of criminal offenses in this case, the one
4 colleague said covered the entire gamut of all white
5 collar offenses that our office investigates. As you know
6 there is multiple schemes to defraud. There is
7 individuals during overlapping times over a number of
8 years. Count one outlined a calculating and controlling
9 investment fraud scheme where the defendant lied to secure
10 substantial payments, 50,000, hundred thousand, \$200,000
11 transfers, and then strung these individuals along in
12 order to at first make some very brief Ponzi style
13 payments, by which I mean using the payments of one
14 individual to make another individual think that their
15 investment was coming back to them to create the guise of
16 successful investments and then shortly after that cutting
17 those payments off to create an even greater return,
18 promising them 50 percent return on their investment. In
19 truth he spent money on his own expenses in very short
20 order, including business and personal debt, credit cards,
21 and the veneer of a lavish life style composed of
22 restaurants, hotels, and I think what is best described as
23 transactional relationships with women of varying ages.

24 He also played on his knowledge and expertise of the
25 government contracting system given that that was what his

1 business had engaged in over a number of years and used
2 that to commit a fraud scheme that underlines the money
3 laundering investigation.

4 That involves securing a one-year subcontract
5 associated with one company, and then once that
6 subcontract was awarded, taking it for his own company and
7 then submitting false invoices knowing that as long as he
8 could make it look like someone is working there because
9 of the time and materials nature of the contract, he could
10 get the maximum amount of money allowed under that
11 subcontract, which was over \$300,000. And then even went
12 so far as to recruit a lay person, someone who is employed
13 as a custodian in Henrico County Public Schools, and
14 working part time at a check cashing store where he was
15 laundering his checks to avoid tax authority, and having
16 that person pretend to be a computer programmer and then
17 submitting their time on those invoices. Not even a close
18 call of whether that person was deserving, whether that
19 contractor should have been paying for that time at all.
20 And this obviously says nothing, Judge, of the child
21 pornography collection.

22 THE COURT: So tell me about the obstruction.

23 MR. ELLIKER: Yes. So, Your Honor, the defendant was
24 aware as early as August of 2019 that authorities were
25 investigating him when he was served with a target letter

1 by FBI agents and Postal Inspectors. Then as additional
2 victims were identified and contacted, those victims who
3 believed they were still involved in this investment
4 program would reach out to Mr. Miller, and he would wave
5 them off and say, this is a misunderstanding. But the FBI
6 investigation is actually getting in the way of our
7 ability to repay people. Sort of trying to implicitly say
8 the FBI is getting in the way of this.

9 The real -- the obstruction that he was actually
10 indicted on, that I think provides the clearest example of
11 obstructive conduct was when it got to the point of the
12 government subpoenaing several of these victims to testify
13 before the grand jury. Those individuals advising Mr.
14 Miller they had been subpoenaed. By that time Mr. Miller
15 was aware that one of the offenses he was being
16 investigated for was obstruction of justice, because it
17 was the offense listed on the cover sheet of the search
18 warrant that was left with him at his home in June of last
19 year. Even knowing that, acknowledged to one of the
20 victims, I am not going to have any more contact with you
21 because they are investigating me for obstruction of
22 justice. But then the Friday before that grand jury
23 testimony, reaching back out to that person to try to
24 reassure them again that everything was above board and
25 that the investigation was going away. I think there is

1 more precise details outlining that in the P S R, but that
2 is the gist of it.

3 THE COURT: Okay.

4 The child porn is what you were starting with.

5 MR. ELLIKER: I would characterize that was
6 monstrous, Judge, both of terms and size and substance.
7 The FBI during the course of the fraud investigation
8 seized more than two dozen electronic devices. During the
9 normal routine triaging process of those devices
10 identified what they believe to be child pornography. The
11 government obtained a follow-on search warrant to then
12 search for child pornography and found scores of images,
13 and then ultimately at the time the defendant was arrested
14 last September agents knew they had left behind devices at
15 his home that they didn't think were recent enough in use
16 to have been covered by the fraud warrant. And went and
17 collected that. Ultimately more than 80 devices were
18 seized from the defendant's home. And on at least 27 of
19 those, ultimately 87 identified more than eleven thousand
20 unique depictions of images that meet the definition of
21 child pornography under the federal statute. And there is
22 three times as much of images that they determined were
23 either age difficult, stuff that clearly was pornographic
24 but they could not pin point the age of the individual, or
25 child erotica, which is not, strictly speaking,

1 pornography, which is not strictly speaking pornography,
2 but sexualized images of children.

3 And these also included screen reporting the
4 defendant made on his own lap top while browsing web cites
5 of videos which shows the basis for the government's
6 charges of receipt. Then finally we did highlight in our
7 brief an apparent nexus between the defendant's penchant
8 for high spending and his particular sexual interest in
9 minors. There is at least instance of where it was clear
10 that the defendant was paying money to teenage girls in
11 what I would describe as an inappropriate relationship.

12 THE COURT: It looked to me like he was getting them
13 ready for sexual activity with him, but to his credit that
14 was to occur after they were 18.

15 MR. ELLIKER: I think that is right. I think that is
16 a fair characterization of the evidence.

17 THE COURT: But his conduct to them was manipulative
18 and brutal.

19 MR. ELLIKER: And I mean to be a man in his 50s
20 sending a 17-year-old girl, between the ages of 15 and 17,
21 more than \$2,500 in cash out payments presumably for some
22 benefit to him either in real time with images that might
23 not have been child pornography, but certainly to groom
24 the possibility of a sexual relationship, and while she is
25 still 17 sending a vibrator to her home. It may not seem

1 specifically criminal conduct in this case, but does speak
2 to the characteristics of the defendant and seriousness I
3 think is borne out by the victim's statements that you --
4 I know you have read, Judge, with victim, V H, of the
5 investment fraud scheme, says he feels humiliated, no
6 longer trusts his own judgment. One victim, F D,
7 describes how he was planning to use the proceeds that
8 seem too good to be true to be able to take care of his
9 family. And when he has a child born unexpectedly
10 premature had to rely on the graces of family members to
11 get him through that instead of paying himself.

12 The C P offense, sorry, Judge, the child pornography
13 offenses, obviously those are deathly serious. And we
14 explain in our position papers the cycle of trauma that
15 even just receiving child pornography, if not involved in
16 the creation, perpetuates it.

17 As part of the process that law enforcement goes
18 through, images and videos are sent to the National Center
19 For Missing and Exploited Children, NCME, the Nickname, as
20 we call it, and they send us back a list of who have been
21 identified as known victims. And among those there are
22 more than a hundred known victims and more than a dozen of
23 them submitted victim impact statements in this case. I
24 think there is one that illustrates what we have
25 characterized as a vicious cycle. The victim using the

1 name Patty, Patty describes having been abused as a
2 ten-year-old in 1973, and found out last year, 47 years
3 after, that those images were on line. Didn't know for
4 her entire adult life until now when she is now in here
5 late 60's. Sorry. Late 50's.

6 She wrote to you, Judge, "I thought my photograph had
7 been destroyed. It was then that I realized this
8 nightmare never went away at all and this reality
9 nightmare replays in my mind, as hundreds of perpetrators
10 all across the world have complete access to my body
11 whenever they wanted. These people are viewing a damaged
12 person that took years to try to heal herself."

13 Judge, that is one victim of a collection of 11,000
14 depictions. The defendant possessed 11,000.

15 In terms of the history and characteristics of the
16 defendant, Judge, the defendant have --

17 THE COURT: He had all of the advantages you could
18 ask for.

19 MR. ELLIKER: That's right. He is well educated,
20 experienced in his chosen profession. And I think to his
21 credit was ultimately successful in his line of work for
22 some period of time until the contract dried up in 2017.
23 He had many opportunities to get his house in order. I
24 think it is safe to say he knew right from wrong when he
25 engaged in a fraud scheme as he did. The letter that was

1 submitted to The Court, Judge, I think also reveals
2 something about the defendant's perspective on this case.
3 The defense attached an example of letters sent to one of
4 the victims -- and I will say that Mr. Townsend provided
5 me additional copies this week of letters sent to all of
6 the victims in the fraud scheme, which we will pass along.
7 The letters are basically the same. In it the defendant
8 wrote, "I accepted your money without fully disclosing the
9 risk. I failed to notify you of my ability to repay
10 changes. I actively encouraged you to reinvest when I
11 needed more time to pay knowing the risks were much
12 higher." This language of "risks" --

13 THE COURT: Like I am a regular stock broker at
14 Merrill Lynch and you are investing in banana futures.
15 That is just grandiose and minimizes the conduct.

16 MR. ELLIKER: I think that's absolutely right, Judge.
17 This was not an investment opportunity that the victims
18 believed it was. These were --

19 THE COURT: Ha.

20 MR. ELLIKER: -- for him to get money under the guise
21 of some promissory note that he thought as long as he
22 could make good on some day everybody would be happy.

23 Obviously I won't recount, Judge, the sad statements
24 provided by the defendant's own family, but I think it
25 provides additional insight that is consistent with the

1 type of person who would commit these types of crimes.

2 I don't say this, Judge, in moral judgment of the
3 defendant, obviously that is not my job, but it does
4 inform the history and characteristics of this defendant
5 in drafting a sentence necessary to achieve the goals of
6 sentencing.

7 In terms of adequate deterrence and protecting the
8 public, Judge, the fact that the defendant will be an
9 older man when he gets out of prison --

10 THE COURT: That really doesn't make much difference.

11 MR. ELLIKER: I agree. There is --

12 THE COURT: I can attest to the fact that people who
13 approach 70 are capable of all kinds of mischief.

14 MR. ELLIKER: Particularly when the crimes here did
15 not require him to be a young agile person, it required a
16 computer screen with a connection to the internet.

17 In terms of avoiding unwarranted disparity, Judge,
18 our view is that Mr. Miller is in a class of his own.
19 Very few defendants I think would come before The Court
20 having committed these same acts, and if they did, I don't
21 think it would be unfair for them to expect the
22 possibility of a sentence of 151 months.

23 THE COURT: How do you get -- tell me how it goes
24 from 135 to 151. How -- do you manipulate the guidelines
25 in some way to get up to that level?

1 MR. ELLIKER: Well, Judge, I can tell you that --

2 THE COURT: That would be a one-level raise.

3 MR. ELLIKER: It would be.

4 Judge, part of this was coming up with a solution for
5 a global resolution of two separate indictments because we
6 indicted the fraud scheme and money laundering and
7 obstruction as one case, and separately indicted the child
8 pornography related offenses. And had there been --
9 proceeded to trial on both of those, we presume that there
10 would have been the possibility of, very real possibility
11 of consecutive sentences being imposed. When you actually
12 look at -- when you look at what the fraud offenses would
13 have come out to on the guidelines, my back-of-napkin math
14 was somewhere between 46 and 57 months is what that
15 guideline range was. And on then on the CP offense it
16 would have been somewhere between 97 to 121 months. If
17 you combine the low end of both those ranges with the high
18 end of those ranges you end up at a much larger range of
19 between 143 and 178 assuming consecutive imposition of
20 sentences. And 151 is at the low end of that combined
21 consecutive range, if that is what I can call it,
22 obviously, part of working out a resolution to the case
23 was, in a case like this, the government was content to
24 cabin itself at 151 months, Judge, and it seemed that that
25 was a fair way to reach that result.

1 THE COURT: All right.

2 MR. ELLIKER: Judge, I would briefly, I think for
3 efficiency's sake, if you would let me touch on some of
4 the defendant's arguments for the downward variance.

5 THE COURT: Go ahead.

6 MR. ELLIKER: So the defendant has raised COVID 19.
7 We acknowledge that he did contract and come through,
8 thankfully, COVID 19 infection in December of last year
9 through January of this year. But as The Court knows with
10 the compassionate relief, you have to consider all the
11 3553(a) factors and not just discount a sentence simply
12 because of COVID 19. I think that is particularly
13 important with someone who has contracted it, has received
14 the vaccine, and during that the systems substantially
15 improved efforts, to mitigate the risk. I checked last
16 night and the BOP's web site indicates out of 130,000
17 inmates there are fewer than 300 confirmed COVID cases
18 among the inmate population at this time.

19 No doubt it has had an effect on his health. I know
20 he is in wheelchair before The Court today. But that
21 doesn't suggest he is a different person or affected
22 mentally. I believe The Court will recall the February
23 plea colloquy during which The Court in asking whether
24 COVID 19 treatment affected his ability to understand what
25 is going on the defendant jokes with The Court and said

1 that the only thing it affected was his inability to
2 remember the capital of Indonesia, which is Jakarta. So I
3 think it is clear he is all there. That is what makes him
4 a dangerous individual to the public.

5 And then finally I think there is a portion of the
6 presentence report that includes observations from the
7 defendant's wife that she hoped after COVID he would have
8 an epiphany, but it quickly became clear he had not
9 changed. By the defendant's own representation in his
10 motion, his treating physician post COVID has not
11 recommended any specific medical treatment.

12 THE COURT: All right.

13 MR. ELLIKER: The other argument that is raised by
14 the defendant is the disparity between possession of child
15 pornography versus receipt. Obviously receipt carries --

16 THE COURT: I will admit that child pornography
17 punishment really doesn't make much sense, and neither do
18 the guidelines. But it is a disturbing case here because
19 not only did he have all of this pornography, which is not
20 uncommon because they use computers and they get it in
21 volumes through the computer, but coupled with the contact
22 with minor females was particularly disturbing.

23 MR. ELLIKER: I think -- I don't disagree with you at
24 a high level, Judge. I would just emphasize that it
25 appears that there is an argument being made on what the

1 statutory mandatory minimums are. Obviously Congress made
2 that decision. But, throughout that argument I think the
3 defendant later focused on the disparities, completely
4 sets aside the fraud schemes and money laundering that he
5 engaged in.

6 And frankly, by asking for a sentence of 60 months
7 the defendant is asking The Court to sentence him on just
8 one count of a three-count criminal information. And I
9 would disagree with the defendant, Judge. When we sat
10 down with him a few years ago all we knew about was the
11 investment fraud scheme. And the lead AUSA on that case
12 informed Mr. Miller if you put down your shovel, we will
13 put down ours. And declined, as is his right to engage in
14 resolution of that. But the investigation that followed
15 uncovered so much more. And I think that is what The
16 Court has to consider. And we ask The Court to impose a
17 sentence of 151 months.

18 THE COURT: Thank you.

19 Now do you have -- his wife is here; is that correct?

20 MR. ELLIKER: Yes, Your Honor.

21 THE COURT: Are there any other victims who are here?

22 MR. ELLIKER: No.

23 THE COURT: Okay.

24 All right. So all of those folks are observers?

25 MR. ELLIKER: Yes.

1 THE COURT: Thank you.

2 MR. ELLIKER: Thank you.

3 THE COURT: All right.

4 Mr. Townsend, let's hear from you on your request for
5 a variance and the 3553(a) factors, and an appropriate
6 sentence in this case.

7 MR. TOWNSEND: Good morning, Your Honor.

8 Judge, I had pointed out a number of different
9 detailed things in sentencing. I will step back and look
10 at this more broadly.

11 THE COURT: That's a good idea, Mr. Townsend.

12 MR. TOWNSEND: The facts are obviously devastating. I
13 have used that word, The Court has used that. There is no
14 doubt, is it is unavoidable for everyone involved. There
15 is no doubt about that.

16 The Court starts with the Sentencing Guidelines. And
17 the government says, well, no, the Sentencing Guidelines
18 aren't appropriate, we need to go above. The defense
19 says, no, the sentencing guidelines are inappropriate, we
20 need to go below.

21 Those variant sentences are unusual sentences. Has
22 to be something that would take us outside of the
23 guideline range. We have to justify that. The government
24 has to justify that or the defense has to justify that.

25 What the government is pointing to, essentially, is

1 the facts of the case.

2 And what they are pointing to at the very end when
3 you asked Mr. Elliker why, how did you get to the 151
4 months? And what is you did? Essentially what he says
5 is, you know, we had a solution, global resolution. And
6 so his argument is that there is a number of different
7 offenses, and because these numbers of different offenses
8 we should have a higher sentence that should go beyond the
9 guidelines. So that begs the question of, why? What is
10 it about the guidelines that doesn't account for the
11 actions? The guidelines are increased -- you know, if he
12 had just pled guilty initially to a fraud charge, the
13 government says it was 46 to 57 months, back-of-envelope.
14 I had it somewhere between two and three years is what I
15 think the sentence probably would have been if it had just
16 been the fraud, even had the fraud loss numbers that we
17 have. And then he doesn't -- we answer in to receipt of
18 child pornography, not possession, receipt. And the
19 sentence, the guideline range is now three times that.
20 And the guidelines are also, you know the reason that it
21 only goes up one level is because the child pornography
22 guidelines are so draconian. I think The Court knows that
23 and recognizes that. So that is the reason that the
24 guidelines only go up one level. And he -- they did that.
25 That happened for him. So that takes into consideration

1 the fraud offense and also takes into consideration the
2 child pornography.

3 The government also then says it is the number of
4 child pornography images, and then the contact with
5 children.

6 Judge, I can't deny that there is completely
7 inappropriate behavior and action on his part in reaching
8 out and sending money to a minor, but as The Court pointed
9 out, I don't see, and there is no allegation that there
10 was anything in this that was illegal. I don't know how
11 that, why that would justify going above the guidelines.
12 So what I am saying is that all of these arguments I am
13 hearing from the government essentially it's the fact is
14 the facts, is the facts. But I haven't heard, why it is
15 that the guidelines haven't taken that into consideration.

16 THE COURT: Well, I think what he is saying is that
17 this case is an unusual amalgam of crimes that takes it
18 beyond what we ordinarily see in these kind of cases.

19 MR. TOWNSEND: I don't disagree. But, isn't every
20 single case when we get to counting units, isn't that the
21 situation?

22 THE COURT: Well --

23 MR. TOWNSEND: Well, if you have a fraud -- it is
24 because of the sentencing guidelines range for the child
25 pornography. That is what it is. That is what makes the

1 difference.

2 THE COURT: Well, I mean, I think that his point
3 is -- where the government is coming from on this, the
4 variance, is that not only you have three different crimes
5 but three kinds of crimes. You have got this fraud on
6 government with the false billings and trying to hide the
7 money and telling his lawyers, or telling accountants to
8 file a cash payment. And then you have got all of this
9 stuff where he is trying to get involved in the intimate
10 lives of a minor, sending a sexual toy to a child that is
11 under the age of 18.

12 It is just bad stuff.

13 MR. TOWNSEND: I am not -- I not contending -- it is
14 not. I agree. I agree. But my contention is that the
15 guideline range takes that into consideration. I mean any
16 time that we are going to group offenses the reason that
17 it only goes up one offense level is because the child
18 pornography charge is so much more serious than the fraud
19 charge.

20 THE COURT: Right.

21 MR. TOWNSEND: Going back to my overview, you know,
22 we start the guidelines. Government says higher, we say
23 lower.

24 Going to the lower side, Your Honor, there is a
25 number of different things. And I think I have outlined

1 it in the sentencing position, but I noted there at the
2 time, but at the detention hearing the government
3 presented evidence in support of incarcerating Mr. Miller
4 waiting for trial because he was a healthy person. He was
5 essentially bragging about that. Kind of reminds me of
6 everybody that is involved in a marathon. You write the
7 thing up, you want to brag how well you have done. Same
8 sort of evidence. That is what it was. He has been
9 swimming, and so they used that because they have
10 everything, his whole life. Everything. They got that
11 and say he is healthy. Well, he also had co-morbidities,
12 he is obese, has COPD, asthma, and we place him in a jail
13 where we know how COVID is passed. Sure enough he gets
14 it. And he spends 29 days in the hospital fighting for
15 his life.

16 When I spoke with Dr. Dudley on the phone he said, "I
17 am surprised he survived."

18 You know, he is laying in a hospital bed. He was --
19 he told the nurse, I feel like I am drowning. And how do
20 we reconcile that? The courts, you know, the case I
21 cited, says, we can consider pretrial incarceration as of
22 the time of departure, that that means, a variance, and
23 and the facts of the case says somebody was in a Columbian
24 prison, and it wasn't that the person was tortured, it was
25 that the conditions in that prison were terrible. Well, I

1 think Mr. Miller would trade that for what he went
2 through. Three months after he is released from the
3 hospital he has 58 percent lung capacity. They recommend
4 physical therapy for him. He had one physical therapy
5 session.

6 THE COURT: Why is he in a wheelchair?

7 MR. TOWNSEND: It is not because he can't stand and
8 he can't walk, it is that he can't stand and he can't walk
9 for that long. He can stand and walk. But he just can't
10 do it for that long. What happened was he was in a
11 hospital bed for about 29 days. Your body atrophies, and
12 then he didn't get the physical therapy that was
13 recommended. So he, you know -- they put him in medical
14 isolation. Medical isolation is just a little cell like
15 what are you going to do to regain the strength? You
16 know, it is not an exaggeration that he nearly died. He
17 was -- he was -- the doctor had a discussion with him
18 about whether or not he would be intubated. And we know
19 what happens then, the percentage of people intubated.
20 Fortunately he recovered. The question is, how could you
21 reconcile this? A number of people, just because they had
22 co-morbidity, and they have the risk of getting COVID were
23 released. Not, you know, but some people were -- I cited
24 those cases -- and he contracted it. How do you reconcile
25 that? How do we -- how -- there has to be a human side.

1 If we are saying you are so dangerous that we are going to
2 incarcerate you waiting for trial. And we are not going
3 to -- we haven't protected you because you get COVID.
4 There has to be -- he didn't want that. He had gone the
5 amount of time during the pandemic out in the community
6 without getting COVID. I think there has got to be a
7 human side. Those 29 days, the time that he is, you know,
8 got up 58 percent lung capacity after three months. He
9 was lower than that, like, you know, how do you reconcile
10 that? How do we account for that?

11 There is also, you know, I think The Court has
12 recognized the difference between receipt of child
13 pornography and possession. He pled guilty to receipt.
14 He played by the rules of the game. He did. He is going
15 to be sentenced under that, but the sentencing commission,
16 you know -- I have cited all of that.

17 THE COURT: How do you possess it without receiving
18 it? I would like to understand that, but I don't.

19 MR. TOWNSEND: Judge, that is why, that is why the
20 sentencing commission a decade ago said that Congress
21 should quote, unquote, align the sentencing.

22 But regardless of that, you play by the game. He
23 pled guilty to the receipt. And, you know, it is kind of
24 a unique state of the law, and there is a difference in
25 the sentences. So, what I am pointing out and asking for

1 is a lower sentence, is what he has gone through and cited
2 cases as how pretrial incarceration can justify a downward
3 variance.

4 What I am pointing out is what the sentencing
5 commission has said is an unusual state in sentencing.
6 And then also I pointed out that the average sentence in
7 non-production cases is lower than the low end of the
8 guidelines. The child pornography, that is what is
9 driving the sentence here, Judge. Rightly so. I
10 understand that.

11 But, you know, where I kind of came up with the 60
12 months is that when you combine all of these things I
13 think realistically, you know, I have a differing view on
14 what sentence would have been if it was just fraud. Let's
15 say three years. That is kind of low end of what the
16 government said. You add another two years to that. I
17 think that takes into consideration the child pornography
18 given the fact of what he has gone through. I don't
19 think -- I just don't understand how we cannot say that
20 when we incarcerate somebody, we haven't protected them,
21 they nearly died, that it is just day for day. Sentence
22 should be day for day. It is a different type of sentence
23 for him. He already had it.

24 Judge, we can say that there is only 300 people in
25 the Bureau of Prisons right now that have, that have

1 COVID, but what we don't know, we don't know. We are
2 finding more and more about the delta variant and how
3 people who have already been vaccinated can pass it. You
4 know, he is not in a situation to survive this again. He
5 is just not there. He is just not there. Hopefully he
6 would get to that point. But there is no way that he is
7 there now to survive it.

8 So, Judge, I also, you know, pointed out the
9 testimony from Congress how the Bureau of Prisons has not
10 addressed some of the things that has caused the spread,
11 or allowed the spread of the corona virus.

12 Judge, seems like we are kind of making all our
13 arguments here. I would like to say that he would ask The
14 Court to recommend that he be at Butner so he can have the
15 appropriate medical treatment. I would ask The Court to
16 recommend that, also. And I would ask The Court for the
17 downward variance.

18 THE COURT: So he would prefer to be at a place with
19 a prison hospital, essentially, as opposed to being in
20 Petersburg?

21 MR. TOWNSEND: He has told -- I can't tell you how
22 many times he has told me to make sure I ask The Court to
23 recommend he be at Butner.

24 THE COURT: Okay.

25 All right. Thank you.

1 MR. TOWNSEND: Thank you.

2 THE COURT: Mr. Miller?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You have a chance now to address me, tell
5 me anything you want me to think about in sentencing you.

6 I will be happy to hear you at this time.

7 THE DEFENDANT: Okay.

8 THE COURT: Let's hear from Mr. Miller. If you can
9 stand up and talk with me. Go ahead.

10 THE DEFENDANT: Thank you, Your Honor.

11 I stand before you today in judgment for my crimes.

12 In the eleven months since my incarceration I have
13 lost everything I ever valued; my loving wife of 22
14 years --

15 Sorry.

16 -- my three amazing kids, my life-long friends, my
17 business of 28 years, my freedom, and a year of my life,
18 Your Honor. I contracted COVID 19 while in custody. This
19 has left me with significant lung damage. And being
20 confined, for now, at least, to a wheelchair. Unable to
21 walk now for more than about a hundred feet.

22 It is difficult to stand for longer than about three
23 to five minutes to take a shower.

24 All of my hardships over the last eleven months has
25 opened my eyes to my crimes. I built my 35-year career on

1 brutal honesty and unquestionable integrity. And I am
2 embarrassed and ashamed for not being completely honest
3 with all the people affected by my actions.

4 Sorry.

5 As to count one, I am sorry I ever accepted money
6 from anyone. I know those people depended on the money
7 and the return that was promised. I know this comes as a
8 terrible loss to them, and their family. Most of all I am
9 sorry for betraying everyone's trust. I promise to work
10 hard upon my release and not rest until every one is
11 repaid.

12 With regard to count two, I violated my fiduciary
13 duty, responsibility to the prime contractors and to U.S.
14 government customers for not accurately reporting our
15 contract hours on invoices. I could have and should have
16 applied for a variance and billed the time accurately.
17 For that I am terribly sorry.

18 THE COURT: How will you bill accurately the time of
19 your custodian that you billed as the computer whiz?

20 THE DEFENDANT: The custodian is a former Naval,
21 member of the U.S. Navy with experience using computer
22 systems aboard the ship that were working to support the
23 training systems for the U.S. military for that contract.
24 His resume was submitted to the prime contractor and to
25 the government, and was accepted by both. His full

1 qualifications are not being provided so that you can make
2 a balanced decision in that.

3 THE COURT: All right.

4 THE DEFENDANT: As to count three, I violated my
5 sacred obligation to my wife and family and to my
6 community, as well as to the victims impacted the abuse.
7 I am embarrassed and ashamed. Whatever positive
8 association I may have ever had with that content has been
9 replaced forever by the painful reality of incarceration
10 and having to fight for my life in the hospital with COVID
11 19.

12 Thankfully, the statistics are in my favor.
13 Recidivism rate for well educated white men over 50 years
14 of age on their first offense is around five percent even
15 after only brief periods of incarceration. I am certain I
16 will never re-offend. And as such I pose no current or
17 future threat to the community or to society.

18 To my wife, my family, my friends and community and
19 victims, I am sorry.

20 Your Honor, I am not the same person I was a year
21 ago. That person died in December of 2020 when I was
22 fighting for my life with every breath in intensive care
23 for a month.

24 One night after a rapid decline in my condition a
25 nurse came in around 11:30 p.m. and asked me to sign a do

1 not resuscitate order. I believe it was either Christmas
2 eve or the day before that.

3 She said, you have less than a 50 percent chance of
4 surviving the night. The hospital is full. We are short
5 staffed because of the holiday, and frankly we have other
6 patients who are more viable who need our help. When I
7 refused to sign the DNR, she says, it don't matter if you
8 sign or not. We are so busy we won't be able to respond
9 any way.

10 I am sorry.

11 That night, Your Honor, I came to grips with the
12 reality that I would likely die. Asking for grace and
13 mercy to forgive my sins. I went to sleep that night and
14 fully accepted the fact I would not wake up.

15 That night the person I used to be died.

16 The nurse didn't come in at 4:30 a.m. to draw blood
17 or administer medication. She simply expected me to die.
18 I woke up around 7:30 a.m. The nurse came in a few
19 minutes later and seemed shocked that I was alive. I woke
20 up that day and every day since simply grateful to be
21 alive.

22 When I was arrested I had taken everyone and
23 everything in my life for granted. I was not humble or
24 grateful. It wasn't was until I almost lost my life. I
25 now I am filled with purpose.

1 Sorry, Your Honor.

2 Respecting amazing gift that every day is. That
3 said, I live every day with a constant fear that if I get
4 COVID again I will most likely die. The stress of
5 incarceration is hard enough on inmates but the last eight
6 months I have been confined to a wheelchair repeatedly
7 exposed to the risk of re-infection with increasing mor
8 contagious and more deadly COVID which caused so much
9 immense fear, my only other alternative is medical
10 isolation where I have already spent six weeks. No human
11 contact. Just four walls, seven foot by ten foot cell
12 that never gets cleaned. Where it took more than an hour
13 of planning to make it three feet from the bed to the
14 toilet. And and another hour to gather up enough strength
15 to make my way back. I was pulled from the hospital
16 early.

17 In closing, Your Honor, I know God gives us no burden
18 greater than we can bear. And that there is a penalty for
19 straying off the path of righteousness. For the last
20 eleven months I have learned patient perseverance. I have
21 also learned true humility and genuine gratitude,
22 something that I professed to know previously, but now
23 know intimately.

24 I knew from the first day I appeared in your
25 courtroom, Your Honor, that you had an unwavering

1 dedication for pursuit of justice. Whatever sentence you
2 make in this regard I am merely grateful for my life and
3 for an opportunity of redemption. And I ask The Court for
4 grace and mercy on this, my first offense, and ask you to
5 impose a sentence no greater than the mandatory minimum of
6 five years and consider Butner so that I can get the
7 medical attention and physical therapy that I so
8 desperately need.

9 Thank you, Your Honor.

10 THE COURT: Thank up. You may be seated.

11 All right. Let's look at the 3553(a) factors. This
12 is a case where I have to do an assessment for the victims
13 of the child sex.

14 MR. ELLIKER: Yes, Your Honor. I am glad you
15 mentioned that. I forget. I handed Ms Fish a consent
16 order of forfeiture.

17 THE COURT: I have got the forfeiture? Also
18 restitution order.

19 THE COURT: Restitution.

20 MR. ELLIKER: If you look at the attachment on the
21 restitution order, it includes victims of the fraud scheme
22 as well as the identified victims who have actual
23 retribution under the child pornography statute.

24 THE COURT: Okay. But there is some assessment that
25 I have to do in some cases in child porn cases for,

1 maybe -- there it is, a trafficking case. Well, you
2 haven't asked for it, so we don't have to worry about it.
3 Okay. Thank you.

4 All right.

5 So the nature and circumstances of the offense are --
6 did you have something to say about that?

7 MR. TOWNSEND: No, sir.

8 THE COURT: Okay.

9 MR. TOWNSEND: Just standing.

10 THE COURT: Nature and circumstances of the offense
11 in this case are essentially -- and this boils down to a
12 fairly complex scheme. He stole money from investors. He
13 stole money from the government. He tried to hide it. He
14 collected child pornography. And he contacted children
15 and gave them money for, apparently, future favors.

16 The history and characteristics of the defendant are
17 that he does not have a criminal history. Personally, he
18 was raised in pretty good circumstances. His father
19 was -- drank excessively, and he was abusive for a while,
20 but later straightened out and took him in and had a
21 business of his own. He, you know, Mr. Miller was able to
22 go to college and to graduate school at Virginia Tech. He
23 was able to go to St. Christopher's, a good private school
24 here in Richmond.

25 As far as family goes, he has been married. He has

1 three children. Physical condition is, obviously he has
2 had problems with COVID. And he doesn't have a substance
3 abuse problem.

4 Educationally he has a masters degree. That is
5 pretty much his back ground.

6 He has been employed for apparently all his adult
7 life in various businesses.

8 The next factor is need for the sentence to reflect
9 the seriousness of the offense.

10 Well, its very serious. Mr. Miller has been a
11 one-man crime spree. He doesn't differentiate between
12 individual defendants, and the biggest defendant possible,
13 the U.S. Government.

14 He doesn't -- all of the apologizing today we didn't
15 hear anything about the little girl he sent a vibrator to.
16 All we heard more about his, how difficult prison is for
17 him than how difficult life is for the victims. This is a
18 person who has mistreated family members, mistreated
19 people he dealt with in business. It is an unusual
20 combination of crimes that he has committed.

21 The next factor is the need to promote respect for
22 the law. Well, once he started down the road to crime he
23 showed none.

24 The next factor is the need to provide just
25 punishment. Just punishment here is I think a serious and

1 weighty sentence.

2 The next factor is the need to afford adequate
3 deterrence. I am always amazed that people are not
4 deterred from collecting child pornography given that we
5 give out long sentences for it all the time. They are, as
6 Mr. Townsend describes, draconian. And yet people
7 continue to do it.

8 So I am not sure that whatever we do today will deter
9 people from committing child pornography crimes. I hope,
10 however, that it will deter people from committing white
11 collar crimes. People who understand what is going on can
12 read the papers and look at what happened in court and can
13 make rational decisions whether to engage. I hope it
14 deters future white collar crimes.

15 Next is the need to protect the public from further
16 crimes of the defendant. I have got to say if there is a
17 single factor in this case that is more important than the
18 others it is that he is a man who is in his 50s, mid 50s,
19 who will eventually get out and be able to function in
20 society, and the shorter the sentence the sooner he can
21 get back to doing what he did in this case. Protecting
22 the public from Mr. Miller is crucial in this case.

23 The next factor is to give him education, vocational
24 training, medical care and other treatment. I think the
25 correctional system does have a good medical system. I

1 don't think he needs anything else.

2 Next is the kinds of sentences available. Counts one
3 and three there is a maximum of 20 years; count two is ten
4 year max; count three is five year mandatory minimum. I
5 can fine him \$250,000 on each of them. I will not impose
6 a fine in this case because, obviously, he can't pay it.

7 The next factor is the need to take into account the
8 guidelines of 108 to 135 months. I can take that into
9 account. I thought about those.

10 The next factor is the need to avoid sentencing
11 disparity among similarly situated defendants. I have
12 never had anybody like this, so there will be no
13 disparity.

14 There is an order of restitution that will be entered
15 in this case.

16 There is a motion for a variance based essentially by
17 the defendant on his health. I will tell you this. I
18 noticed something very interesting today about Mr. Miller.
19 When he was explaining how contrite he was about his
20 situation he patented, he paused, he cried. When he was
21 explaining why the custodian he enlisted in his plan was
22 actually skilled in computer science he was articulate,
23 well spoken, quickly spoken, with no pauses, no deep
24 breaths, and it just caused -- I candidly don't think that
25 this man has an ounce of contrition. And it made me

1 wonder about the seriousness of his health. I will accept
2 that Mr. Miller has had COVID, that he lost lung capacity,
3 and I am sorry for him and the thousands of other
4 Americans who suffered from COVID. I think that prison
5 system can take care of that.

6 There is a motion for a variance by the government
7 essentially based on the gross nature of the crimes and
8 their combination and his extraordinarily bad character.
9 I will say that it is combination of offenses. If the
10 government asked for more, I would have given him up to
11 the maximum of 20 years.

12 All right.

13 The amount of restitution in this case is
14 \$1,146,560.32. I am not going to impose interest on that.
15 I will waive it. I will impose a restitution order today
16 to that effect.

17 There is also an order of forfeiture here for all the
18 various electronic equipment that he had, that he used on
19 this pornographic escapades.

20 I will enter that.

21 All right.

22 Mr. Miller, please stand up.

23 You can stay seated. I know you are having trouble.

24 THE DEFENDANT: Is it okay if I stand, Your Honor?

25 THE COURT: You can stand or sit.

1 Pursuant to the factors set forth in section 3553(a)
2 and the Sentencing Reform Act of 1984, and having
3 considered the Federal Sentencing Guidelines as advisory,
4 it is the judgment of The Court that you are hereby
5 committed to the custody of the U S Bureau of Prisons to
6 be imprisoned for a term of 151 months, with credit for
7 time served. This consists of 151 months on count one and
8 count three; and 120 months on count two; all to be served
9 consecutively. This sentence is sufficient but does not
10 exceed amount of time necessary to achieve the goals of
11 sentencing as set forth in 18 U S code section 3553; it
12 reflects the seriousness of the offense, promotes respect
13 for the law, provides just punishment for the offense, and
14 protects the public from further crimes that you may

15 commit. I recommend that the Bureau of Prisons assign you
16 to the facility in Butner, North Carolina, or to another
17 facility which has a prison hospital associated with it.

18 Upon release from imprisonment you will be placed on
19 supervised release for a term of life on count three, and
20 for three years on count one and two to be served
21 concurrently. So when you get out you have to report to
22 the probation office in the district in which you are
23 released. While on supervised release you will not commit
24 any federal, state, or local crimes. You will not
25 unlawfully possess a controlled substance. You will not

1 possess a firearm or destructive device. You will comply
2 with the standard conditions of supervised release as
3 recommended by the U.S. Sentencing Commission.

4 Mr. Townsend, did you go over those? They are in the
5 presentence report.

6 MR. TOWNSEND: The supervised release? Yes, sir.

7 THE COURT: Good. Thank you.

8 You can not open credit cards or lines of credit
9 without the approval of your probation officer. You will
10 provide the probation officer access to any requested
11 financial information.

12 All right.

13 I have considered your net worth and liquid assets,
14 your life style and financial needs as reflected in the
15 presentence report, your earning potential and the
16 dependents relying on your support and find you are not
17 capable of paying a fine. No fine will be imposed. But
18 as to count one, two and three you will pay a special
19 assessment in the amount of a hundred dollars each. If
20 you have not already done so, the total special assessment
21 is \$300. It is due in full immediately. Any unpaid
22 balance will have to be paid when you start supervised
23 release in installments of not less than ten dollars per
24 month until paid in full. Those will start 60 days after
25 your supervised release begins to allow you to get your

1 feet on the ground. Payment of any unpaid balance is a
2 special condition of your supervised release. Any
3 forfeiture previously entered is hereby made a part of the
4 sentence and included in the judgment.

5 You have 14 days to appeal this to the U.S. Court of
6 Appeals for the Fourth Circuit. You don't have to pay
7 money to do that. Mr. Townsend will file the appropriate
8 papers if you ask him.

9 Anything else, Mr. Elliker?

10 MR. ELLIKER: Your Honor, you the government moves to
11 dismiss the indictment underlying this case at the outset,
12 and also in the related child pornography case.

13 THE COURT: All right. That motion is granted.

14 Anything else, Mr. Townsend?

15 MR. TOWNSEND: Nothing.

16 THE COURT: All right.

17 Let me thank all the people who came today.

18 Mr. Miller, you are remanded to the custody of the
19 Marshal.

20 Did I say he gets credit for time served?

21 MR. TOWNSEND: You did.

22 THE COURT: I did?

23 MR. ELLIKER: You did say that, yes.

24 THE COURT: All right.

25 You are remanded to the custody of the Marshal.

1 Mr. Miller, sir, good luck, and God bless you.

2 THE DEFENDANT: Thank you, Your Honor.

3 THE COURT: Let's adjourn court.

4 Let me see counsel back in chambers after you get a
5 chance to take care of whatever you have to take care of
6 out here. I want to talk to you about something
7 unrelated.

8 Thank all very much.

9 HEARING ADJOURNED

10 Certified true and correct transcript.

11 Gilbert F. Halasz, OCR
12 Official Court Reporter

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